

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3425 OF 2004

Shri.Mubarak Daudbhai Attar ...Petitioner

vs.

State of Maharashtra and
three others. ...Respondents.

Dr.V.K.Choudhary, for Petitioner.

Mr.V.P.Malvankar, Addl.G.P. for State-Respondent

CORAM: A.P.SHAH & S.U.KAMDAR, JJ.

DATED: 21st September, 2004

ORAL JUDGEMENT (PER S.U.KAMDAR, J.)

1. By the present petition, the petitioner is challenging the order passed by Maharashtra Administrative Tribunal dated 4th December, 2003 in original application no.169 of 2003. By the said order, Tribunal has rejected the contention of the petitioner to treat the date of appointment of the petitioner in service as 2.9.1966 when he was selected for the post of Statistical Assistant/Senior Assistant Statistician. Some of the facts which are necessary for the determination of the present

petition are as under:-

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2. On 27.6.1966, the petitioner was selected by the Selection Board of State of Maharashtra to the post of Statistical Assistant. Consequently, he joined the service on 2.9.1966.

3. On 5.7.1968, the petitioner appeared for selection for the post of Extension Officer (Co-operation) and on selection, was recommended for appointment to the said post. The petitioner, thus, accepted the post of Extension officer (Co-operation) in Zilla Parishad, Pune, with effect from 5.7.1968.

4. On 6.9.1976, the post of the Extension officer (Co-operation) in Zilla Parishad was abolished by the State of Maharashtra and new post was created namely Assistant Co-operative Officer. Alongwith the other persons, the petitioner was absorbed to the said newly created post by passing G.R. on 6.9.1976.

5. On 31.5.1999, the petitioner has already retired from services. However, firstly, the petitioner claims that the petitioner was not given appropriate seniority and thus his further promotion

are affected, and secondly juniors to him were promoted at an earlier date than the petitioner

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herein. According to him this has resulted in discrimination against the petitioner. In view of his aforesaid contention, the petitioner filed O.A. before Maharashtra Administrative Tribunal bearing no.169 of 2003. By order and judgement dated 4th December,2003, the said tribunal has rejected the application preferred by the petitioner.

3. The learned Advocate for the petitioner before us has contended that the petitioner was entitled to various promotions because of his absorption in the newly created post as Assistant Co-operation officer, but it was denied by not taking into consideration his original date of appointment as Statistical Assistant on 27.6.1966, but he was promoted on the basis of his appointment as Extension officer (Co-operation) on 5.7.1968. It is the case that the post of Extension officer (Co-operation) and Statistical Assistant is the same post and/or in any event equivalent post and the appointment of the petitioner as the Extension officer (Co-operation) was not by way of promotion but mere change of portfolio. The petitioner, in the present petition

has further sought relief that his pay scale should be revised on the basis of seniority and promotion to which he was eligible in the course of his employment

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even though he was superannuated on 31.5.1999. He has further contended that he is entitled to higher retirement benefits on the aforesaid post and the same should have been granted to him by the tribunal.

4. The tribunal in his judgement has inter alia held that the petitioner initially was appointed as Statistical Assistant and his subsequent appointment as an Extension officer (Co-operation) is not mere change of portfolio but was a fresh appointment in the Zilla Parishad. It is because the petitioner was once again selected by the Divisional Selection Board and fresh appointment order was issued to him by the concerned authority for the said post. It is therefore, contended that same cannot be treated as a continuation of same cadre which the petitioner was earlier holding as a Statistical Assistant.

5. We have considered the judgement impugned herein but we do not find any infirmity in the same. We are not impressed with the arguments of the

learned counsel for the petitioner that for the purpose of his absorption as Assistant Co-operation officer in the year 1976, he should have been appointed on the basis of his initial appointment as

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Statistical Assistant. Once the petitioner has been appointed on the new post, the earlier period cannot be taken into consideration for his new appointment and/or absorption as contended by the petitioner.

6. The petitioners' appointment as Extension officer (Co-operative) in Zilla Parishad was not by way of a promotion and therefore, the question considering his initial date of appointment as statistical Assistant does not arise. In any view of the matter, we find that the view taken by the tribunal is a possible view and it requires no interference by this Court in its writ jurisdiction under Section 226 of Constitution of India. Accordingly, we dismissed the petition. However, there shall be no order as to costs.

(A.P.Shah, J.)

21.9.2004.

(S.U.Kamdar, J)